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ORIGINAL
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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONNA BURTON,

Plaintiff,

vs.

ALLIED DATA CORPORATION,

Defendant.

) Case No. **CV 10 790**

)
) COMPLAINT FOR VIOLATION
) OF FEDERAL FAIR DEBT
) COLLECTION PRACTICES ACT,
) ROSENTHAL FAIR DEBT
) COLLECTION PRACTICES ACT,
) AND INVASION OF PRIVACY

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices. Ancillary to the claims above, Plaintiff further alleges claims for

1 invasion of privacy arising from intrusion upon seclusion and public disclosure of
2 private facts.
3

4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).
6

7 **III. PARTIES**

8 3. Plaintiff, DONNA BURTON ("Plaintiff"), is a natural person
9 residing in Mendocino county in the state of California, and is a "consumer" as
10 defined by the FDCPA, 15 U.S.C. § 1692a(3) and is a "debtor" as defined by Cal
11 Civ Code 1788.2(h).
12

13 4. At all relevant times herein, Defendant, ALLIED DATA
14 CORPORATION("Defendant") was a company engaged, by use of the mails and
15 telephone, in the business of collecting a debt from Plaintiff which qualifies as a
16 "debt," as defined by 15 U.S.C. §1692a(5), and a "consumer debt," as defined by
17 Cal Civ Code § 1788.2(f). Defendant regularly attempts to collect debts alleged
18 to be due another, and therefore is a "debt collector" as defined by the FDCPA,
19 15 U.S.C. § 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).
20
21

22 **IV. FACTUAL ALLEGATIONS**

23 5. At various and multiple times prior to the filing of the instant
24 complaint, including within the one year preceding the filing of this complaint,
25 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.
26
27
28

1 Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,
2 including but not limited to:
3

- 4 a) Causing a telephone to ring repeatedly or continuously to
5 annoy Plaintiff, including, but not limited to, calling
6 Plaintiff more than twice a day and more than ten times a
7 week (Cal Civ Code §1788.11(d));
- 8 b) Communicating, by telephone or in person, with Plaintiff
9 with such frequency as to be unreasonable and to constitute
10 an harassment to Plaintiff under the circumstances,
11 including, but not limited to, calling Plaintiff more than
12 twice a day and more than ten times a week (Cal Civ Code
13 §1788.11(e));
- 14 c) Failing to provide Plaintiff with the notices required by 15
15 USC § 1692g, either in the initial communication with
16 Plaintiff, or in writing within 5 days thereof (§1692g(a));
- 17 d) Causing Plaintiff's telephone to ring repeatedly or
18 continuously with intent to harass, annoy or abuse Plaintiff,
19 including, but not limited to, calling Plaintiff more than
20 twice a day and more than ten times a week (§1692d(5));
- 21 e) Failing to disclose the caller's individual identity in a
22 telephone call to Plaintiff (§1692d(6));
- 23 f) Failing to disclose Defendant's true corporate or business
24 name in a telephone call to Plaintiff (§1692d(6));
- 25 g) Threatening to take an action against Plaintiff that cannot
26 be legally taken or that was not actually intended to be
27 taken (§1692e(5));
28

- 1 h) Falsely representing that a legal proceeding has been, is
2 about to be, or will be instituted unless payment of a
3 consumer debt is made (Cal Civ Code §1788.13(j)); and
- 4 i) Placing (a) telephone call(s) to Plaintiff without disclosure
5 of the caller's true identity or a registered alias name along
6 with the name of the agency authorizing the call (Cal Civ
7 Code §1788.11(b)).

8 6. Defendant's aforementioned violations of the FDCPA and RFDCPA
9 also constitute an intentional intrusion into Plaintiff's private places and into
10 private matters of Plaintiff's life, conducted in a manner highly offensive to a
11 reasonable person. Plaintiff had a subjective expectation of privacy that was
12 objectively reasonable under the circumstances.

13 7. Defendant's aforementioned disclosure of facts regarding Plaintiff's
14 debt to third parties constitutes a public disclosure of a private fact not of
15 legitimate public concern. Defendant's disclosures were highly offensive to a
16 reasonable person.

17 8. As a result of the above violations of the FDCPA, RFDCPA and
18 invasion of privacy, Plaintiff suffered and continues to suffer injury to Plaintiff's
19 feelings, personal humiliation, embarrassment, mental anguish and emotional
20 distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages,
21 statutory damages, and costs and attorney's fees.

COUNT I: VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT

9. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA;
- B. Actual damages;
- C. Statutory damages;
- D. Costs and reasonable attorney's fees; and,
- E. For such other and further relief as may be just and proper.

COUNT II: VIOLATION OF ROSENTHAL
FAIR DEBT COLLECTION PRACTICES ACT

10. Plaintiff reincorporates by reference all of the preceding paragraphs.

11. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the RFDCPA;
- B. Actual damages;

- C. Statutory damages for willful and negligent violations;
- D. Costs and reasonable attorney's fees,
- E. For such other and further relief as may be just and proper.

**COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION
AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS**

12. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Actual damages
- B. Punitive Damages; and,
- C. For such other and further relief as may be just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

Respectfully submitted this 22nd day of February, 2010.

By: 

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